



October 7, 2005

Ms. Jennifer Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

Docket No. R-1234

Re: Electronic Funds Transfers  
70 FR 49891 (August 25, 2005)

Dear Sir or Madam:

America's Community Bankers (ACB)<sup>1</sup> is pleased to comment on the proposal issued by the Board of Governors for the Federal Reserve System (Federal Reserve) that would amend Regulation E and its official staff commentary to provide more flexibility in the disclosure of automated teller machine (ATM) fees.<sup>2</sup>

### **ACB Position**

ACB supports the proposal. We believe the proposed amendment to Regulation E and its official staff commentary would enable community banks and consumers to more fully benefit from surcharge free ATM networks and other arrangements whereby the institution has elected not to impose a surcharge on all ATM users. We do not believe that the proposed amendment will weaken consumer protections because other disclosure provisions in Regulation E require more comprehensive fee disclosures.

### **Proposal**

Section 904(d) of the Electronic Fund Transfer Act (EFTA), as amended by the Gramm-Leach-Bliley Act, requires an ATM operator that imposes a fee on any consumer for electronic funds transfer (EFT) services to be required to provide notice of the fee in a

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<sup>1</sup> America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit [www.AmericasCommunityBankers.com](http://www.AmericasCommunityBankers.com).

<sup>2</sup> 70 Fed. Reg. 49891 (Aug. 25, 2005).

prominent and conspicuous location on or at the ATM. Furthermore, before the consumer has committed to completing the transaction, the ATM operator must disclose the amount of the fee either on the screen on the ATM or on a paper notice.

The Federal Reserve's Regulation E implements the EFTA. Regulation E currently requires an ATM operator that charges any consumer a fee for initiating an EFT or a balance inquiry to post a notice stating that a fee will be imposed. The proposed amendment would revise the ATM signage rules to provide that ATM operators may provide a notice that a fee may be imposed if there are circumstances under which some consumers would be charged for services while others would not.

### **Surcharge Free Transactions**

Section 205.16(b) of Regulation E requires community banks to make ATM fee disclosures that are not always accurate. Many community banks do not impose an ATM fee for every transaction that is conducted via ATMs the bank operates.<sup>3</sup> Specifically, financial institutions do not charge ATM fees when:

- The institution owning the ATM and the cardholder's bank participate in a surcharge free or privilege status ATM network.<sup>4</sup>
- The ATM user receives financial assistance from the state and federal government in the form of electronic benefits transfer (EBT) cards and the financial institution chooses not to impose ATM fees on EBT transactions in exchange for Community Reinvestment Act credit.
- The institution's competitors do not charge for ATM transactions.
- The institution has an agreement with a third party independent service offerer (ISO) that deploys ATMs in grocery stores, shopping malls, highway rest areas, etc.

Because ATM operators often do not impose ATM fees, the existing regulation forces financial institutions to provide disclosures that are arguably misleading by implying that all non-customer ATM users will be charged a fee. Therefore, we urge the Federal Reserve to adopt the proposed amendment to Regulation E and allow institutions to satisfy the EFTA's disclosure requirement by posting a notice that a transaction fee "may" be imposed as opposed to "will" be imposed.

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<sup>3</sup> Pursuant to the EFTA, an ATM operator is any person who operates an ATM at which consumers initiate and EFT or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

<sup>4</sup> ACB Business Partners has partnered with Allpoint, America's largest surcharge-free ATM network, to offer ACB members and their customers access to over 30,000 surcharge free ATMs nationwide. Allpoint has ATMs in all 50 states – 1 out of 12 ATMs in America is an Allpoint Surcharge-Free ATM.

## **Disclosure of Surcharges**

Many community banks impose ATM fees on all non-customer transactions. Consistent with the EFTA and Regulation E's existing requirements, institutions post a notice on the machine stating that a surcharge will be applied to non-customers and provide the cardholder with an option to cancel the transaction once customer views the ATM screen containing the message that the transaction will be assessed a fee.

Community banks that participate in a surcharge free ATM network will impose ATM fees on some, but not all cardholders. As long as a consumer's bank is a member of the network, no ATM fees will be levied. The disclosure practices of surcharge free ATM networks may vary, depending on the telecommunications technology that a particular machine uses. Generally speaking, if the ATM uses a lease line or similar telecommunications protocol, the ATM operator will program the machine so that the "surcharge screen" will be bypassed entirely for those cardholders. However, if the ATM uses dial-up telecommunications, the cardholder will still see the surcharge screen and will have to press the "Yes" button to accept the surcharge, even though no fee will actually be assessed.

## **Possible Impact on Consumers**

ACB believes that the proposed amendments to Regulation E and the staff commentary will have a negligible effect on consumers. We believe existing on-screen notices adequately inform consumers by stating the precise fee associated with a particular transaction.

Under Section 205.16(b)(1) of Regulation E, an ATM operator that charges a transaction fee must notify consumers that a surcharge will be imposed for such services. This notice must be posted in a prominent and conspicuous location, either on or at the ATM and serves as an alert to the consumer that a fee may be imposed. In addition, before the consumer is committed to paying such a fee, the ATM operator must provide an additional notice that includes the amount of the surcharge, either on the ATM screen or on paper. Only after the consumer is provided these required notices and affirmatively elects to continue with the transaction or balance inquiry may the ATM operator impose a fee.

ACB believes that the screen/paper disclosure that details any fees prior to completing the transaction does more to protect consumers than the "may/must" language being debated. If any consumer confusion results, it would more likely be a result of the differences in telecommunications capabilities used by various ATMs that are part of a surcharge free ATM network. There may be consumer confusion in situations where the consumer must indicate that he or she will accept ATM surcharges when, in fact, no fee will actually be assessed. We believe that this issue will correct itself over time as telecommunications protocols become more streamlined as dial-up telecommunications are replaced with more modern technology.

### **Implementation Issues**

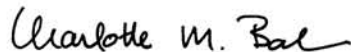
We urge the Federal Reserve to clarify that ATM signs stating "a fee will be imposed" and "a fee may be imposed" both comply with the EFTA and Regulation E. The deletion of the word "will" should not be construed to make the use of this term inappropriate, even if a fee is not charged in all cases. The choice of "may" versus "will" should be a customer relations issue that is left to the institution.

In the event financial institutions are required to change their signage, the Federal Reserve should give institutions one year from the adoption of the final rule to implement such changes.

### **Conclusion**

Thank you for the opportunity to comment on this matter. Should you have any questions, please contact Krista Shonk at 202-857-3187 or [kshonk@acbankers.org](mailto:kshonk@acbankers.org).

Sincerely,

A handwritten signature in cursive script that reads "Charlotte M. Bahin".

Charlotte M. Bahin  
Senior Vice President  
Regulatory Affairs